

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5527 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHIEF OFFICER

Versus

KISHORGIRI DHIRAJGIRI GOSWAMI

Appearance:

MR YS LAKHANI for Petitioner

MR JT TRIVEDI for Respondent

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 14/10/96

ORAL JUDGEMENT

Rule. Service of Rule is waived by Mr.J.T.Trivedi, learned advocate for the respondent who has filed a caveat . Upon joint request, the petition is taken up for hearing today itself in view of the peculiar facts and special circumstances.

The petitioner is the Chief officer of Mangrol Nagar Palika who has challenged the legality and validity of the order recorded by the Labour court, Junagadh in Reference (LCJ) No. 157 of 1991 dated 8.4.1996, by filing this petition under Articles 226 and 227 of the Constitution of India. The following facts are no longer in controversy:

- (1) Father of the respondent was working as valveman-cum-lineman with the petitioner but on account of his ill-health, requested the Petitioner to permit him to voluntarily retire and to appoint his son in his place permanently on regular scale. By virtue of resolution of the General Board of the petitioner-municipality, request of the father of the petitioner was accepted as a result of which, the petitioner came to be appointed as valveman-cum-lineman from 1.2.1987 and permitted the father of the petitioner to voluntarily retire from the said post. A copy of appointment order is produced on record.
- (2) Service of the respondent came to be terminated by an order dated 18.3.1987 without following any procedure.
- (3) The petitioner came to be directed to reinstate the respondent workman to his original post with continuity of service alongwith full back wages within one month from the date of publication of the award recorded by the Labour court, Junagadh on 8.4.1996 pursuant to the reference made by the Assistant Commissioner of Labour, Porbandar. The Labour court found that the termination of service of the respondent was without following requisite procedure and that new recruitment came to be made after termination of service of the respondent. It appears that the petitioner remained absent before the Labour court.

After having examined the facts and circumstances and the record which was submitted by the learned advocates for the parties. this court is not inclined to interfere with the erits of the impugned order recorded by the Labour court while exercising extra-ordinary, equitable and prerogative writ jurisdiction of Articles 226 and 227 of the Constitution of India.

Mr Lakhani while appearing for the petitioner, under instructions from the Chief officer who was present in court, stated that there is no availability of post of

valveman-cum-lineman but the respondent could be reinstated on the equivalent post of octroi guard . Therefore, he indicated that the respondent could be reinstated in service on the said post of octroi guard instead of valveman-cum-lineman to which learned advocate for the respondent Mr. Trivedi has no objection. Mr. Trivedi has also fairly submitted that if the respondent is reinstated in service even on the post of octroi guard,he would not claim back wages. Thus, learned advocate Mr.Trivedi upon instructions from the respondent who is present in court fairly stated that the respondent does not press any back wages as ordered by the Labour court.

Having regard to the facts and circumstances and the submissions made by the learned advocates for the parties who are present in court, the impugned award is required to be modified.

In the result, the respondent workman instead of his reinstatement to his original post,will be reinstated in service on the post of octroi guard, of course with continuity of service but without back wages,as the post of octroi guard is equivalent to that of valveman-cum-lineman. The petitioner shall permit the respondent to resume his duty on the said post within a period of two weeks from today. The impugned order therefore would stand modified. Rule is made absolute to the aforesaid extent with no order as to costs.